

FIFTH DIVISION  
December 20, 2013

No. 1-12-2439

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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STERN HOLSTEIN & ZIMMERMAN, P.C., formerly	)	Appeal from the Circuit Court
known as STERN HOLSTEIN ZIMMERMAN &	)	of Cook County
HANSON, P.C. ,	)	
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	
THOMAS A. ZIMMERMAN, JR.,	)	
Defendant-Appellant,	)	
	)	
and	)	12 L 2928
	)	
ROBERT A. HOLSTEIN,	)	
Defendant-Appellee,	)	
	)	
and	)	
	)	
MARZY, INC.,	)	Honorable
Intervenor-Appellee.	)	Daniel J. Pierce,
	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Justices Palmer and Taylor concurred in the judgment.

ORDER

¶ 1 HELD: The trial court erred in dismissing this case with prejudice while Zimmerman's interest in the attorney fees from the disputed cases remained pending after the other parties entered into a settlement agreement.

¶ 2 This case involves a protracted dispute over attorney fees in settled cases handled in part by defendant Thomas A. Zimmerman, Jr., and was the subject of a previous decision by this court. See *Sun v. Northwestern*, 2011 IL App (1st) 090693-U. The litigation began following the dissolution of the law firm plaintiff Stern Holstein & Zimmerman, P.C. (SHZ), which employed both Zimmerman and defendant Robert Holstein. The bulk of the litigation has settled, but Zimmerman continued to seek a portion of attorney fees from settlements in three cases. In December 2008, the trial court entered an order following a settlement reached by all parties, except Zimmerman, in case no. 02 CH 9130 (02CH) distributing the funds to interested parties, including SHZ and Holstein. In that order, the court transferred \$62,000 to a pending case in the chancery court, case no. 07 CH 36897 (07CH), to be held in escrow for Zimmerman. Zimmerman appealed this order and we concluded that we lacked jurisdiction because there was no final appealable order for the court's consideration since the 07CH case remained pending with the \$62,000 in escrow, and we dismissed the appeal. *Sun*, 2011 IL App (1st) 090693-U, ¶ 17.

¶ 3 On remand, the case was renumbered in the circuit court under the current case number. In April 2012, Zimmerman filed a combined motion for an extension of time to file his amended motion to adjudicate attorney fee interest and motion to compel the escrow agent to produce documents and give an accounting of disbursements. Holstein filed an objection to the motion and Zimmerman filed a reply. In August 2012, the trial court dismissed the case with prejudice, finding that the court could take no action and there was nothing to resolve in the 02CH case and stated that Zimmerman "can advance his claims in the pending 07 CH matter."

¶ 4 Zimmerman appeals, advancing the same arguments raised in the previous appellate proceedings with one new argument. He argues that the trial court lacked jurisdiction to proceed in disbursing the disputed fees without his agreement, failed to properly prioritize the competing claims to the fees under Illinois law, deprived him of his due process rights, showed judicial bias against him, and the trial court erred in dismissing the case with prejudice on remand.

¶ 5 In December 2001, attorney Jerome Stern abruptly decided to close SHZ and retire from the practice of law. Stern owned 70% of SHZ and Zimmerman owned the remaining 30%. Holstein was a partner at SHZ, but did not own any equity in the firm. Following the closure of SHZ, Zimmerman and Holstein agreed to continue to represent clients in pending cases from SHZ. The disputed fees at issue arose from settlements in three cases: *Sun, et al. v. Northwestern University* (case no. 01 L 2960), *Huddleston v. Humana, Inc.* (case no. 98 L 14147), and *Ellis v. DePuy Orthopedics Inc., et al.* (case no. 98 L 7290) (collectively, the disputed fee cases).

¶ 6 In 2002, Stern filed the 02CH case seeking declaratory and injunctive relief against Zimmerman and Holstein, based on allegations that the firm was deprived of the time records or client files necessary to fairly apportion attorney fees as they were being received in various client actions including the disputed fee cases. Zimmerman counterclaimed in the 02CH case for an accounting and damages, alleging Stern abandoned clients, mismanaged the firm's assets, and breached his fiduciary duties; Zimmerman also filed a claim against Stern's wife, alleging she used the firm's charge cards for her own expenses; and Stern's wife sued the firm alleging she was an unsatisfied creditor.

¶ 7 In 2003, most of the 02CH case was settled when Zimmerman agreed to sell his 30%

share of the firm to Stern for \$110,000. Accordingly, Stern was now the sole owner of the firm, and he no longer needed to account for his and his wife's use of the firm's assets, and enabled Stern to deal with the firm's creditors and wind up the firm's affairs as he saw fit. The settlement order dismissed Zimmerman, Stern, and Mrs. Stern from the action with prejudice, dismissed all claims, counterclaims, and third-party claims brought by SHZ, Zimmerman, Stern, and Mrs. Stern, and the case continued for the remaining parties, SHZ and Holstein. Any claims against Holstein remained pending. However, the settlement agreement specifically provided that "there is no complete settlement concerning the division of attorney's fees" in the disputed fee cases. After a status hearing in 2005, the judge specified that Zimmerman was entitled to receive notice of all further proceedings and the record indicates Zimmerman continued to engage in motion practice and appear before the court.

¶ 8 In September 2005, Zimmerman filed a motion to adjudicate attorney fee interests, seeking a share of the attorney fees from the *Sun* and *Huddleston* cases. Zimmerman stated that \$303,440.25, had been deposited in the *Sun* case, in addition to a previous partial settlement of \$125,000, for which Zimmerman had received \$37,500. Zimmerman also stated that \$83,333.33, had been deposited as attorney fees in the *Huddleston* case. In December 2005, SHZ joined Zimmerman in filing a joint supplement to the motion to adjudicate attorney fee interests and included an exhibit prepared by the receiver for SHZ outlining the proposed distribution of the attorney fees in the disputed fee cases as well as other cases. The exhibit stated that \$102,500 was due to SHZ, \$148,542 was due to Zimmerman, and \$132,291 was due to Holstein. Holstein objected to this distribution.

¶ 9 Again in April 2007, SHZ and Zimmerman filed a joint motion to adjudicate attorney fee interests and presented the same proposed distribution. In response, Holstein contended that Zimmerman lacked standing following his 2003 settlement and that SHZ failed to present a legal basis for the motion. In September 2007, the trial court entered an order over SHZ's objection disbursing the \$83,333.33 in attorney fees from the *Huddleston* case with \$41,666 to Holstein, \$16,667 to Zimmerman, and \$25,000.33 claimed by SHZ placed on deposit in the circuit court. The court ordered the account for this case to be closed. This division of the funds was identical to the recommendation of the receiver for this case.

¶ 10 In December 2008, the trial court entered an order over Zimmerman's objection pursuant to a settlement between the remaining parties. The order provided that "all matters in controversy" between Stern and SHZ are settled with Holstein in full for \$85,000 from the escrow account to SHZ. From that amount, \$31,000 to be paid to the receiver for his work on the case. An additional \$14,000 was allocated to Jewel Klein for full settlement of any claims she may have against SHZ and the other law firms. The order awarded \$170,000 to Holstein and Marzy, Inc. (Holstein's creditor). The 07CH case shall remain pending before the trial court and \$62,000 shall remain in the escrow account in the circuit court. The court appointed an escrow agent to distribute the \$269,000 as indicated.

¶ 11 In January 2009, Zimmerman filed a combined motion to reconsider and/or vacate the orders distributing funds held by the court and a motion to make *ex parte* correspondence of record. Zimmerman argued that the trial court erred as a matter of law and should vacate the orders because he was entitled to his contract fees in the disputed fee cases and the orders

deprived him of property to which he was contractually entitled without due process and in the absence of any legal authority allowing the trial court to abrogate the fee contracts. Zimmerman attached the retainer agreements from some of the disputed cases to the motion. In the *Sun* case, the agreement stated that Holstein and Zimmerman were each entitled to 50% of the attorney fees generated in the case. Under the agreement, the attorneys were to receive 33% of the first \$150,000, then 25% of the next \$850,000, and then 20% for any recovery over \$1,000,000. The retainer agreement from *Huddleston* was also attached, but this copy of the agreement does not include the division of the attorney fees because the page in the record cuts off the relevant part of paragraph 4. The retainer agreement from *Ellis* is not included in the record. Zimmerman stated in an affidavit that he did not have an executed copy of the retainer agreement in *Ellis*, but he believed it was "substantially identical" to the *Sun* and *Huddleston* contracts. However, he could not recall "whether the Ellis contract provided for an express 50/50 division of fees between Holstein and myself."

¶ 12 In February 2009, the trial court denied Zimmerman's motion to reconsider and/or vacate the distribution orders, discharged the escrow agent, and noted that the remaining funds, approximately \$62,000, would remain on deposit with the clerk of the circuit court pending further order of the court. The record from the hearing on the motion disclosed that Zimmerman was offered \$50,000 during the December 2008 settlement, but he declined the offer. The trial court noted that the matter would be transferred to the chancery division for any remaining matters in the 07CH case. Zimmerman appealed to this court.

¶ 13 On appeal, Zimmerman argued that he was entitled to approximately \$250,000 in attorney

fees and the trial court lacked jurisdiction to distribute funds without his agreement, failed to prioritize his superior claim for the contested attorney fees, violated his due process rights and showed bias against him. However, we concluded that we lacked jurisdiction to consider the appeal because 07CH case remained pending and there was no final order.

"[W]e conclude that when Zimmerman filed this appeal, rights to the attorney fees generated in *Sun, Ellis, and Osborne (Huddleston)* had not been fully and finally determined by the circuit court. Until the dispute is resolved by the distribution of the approximately \$62,000, the current orders remain interlocutory and subject to reexamination by the circuit court. The orders cannot be construed as final and appealable as a matter of right because they do not conclude the litigation on the merits or dispose of the parties' rights, and there is still more to be done than proceed to execution of the orders." *Sun*, 2011 IL App (1st) 090693-U, ¶ 12.

Accordingly, we dismissed Zimmerman's appeal for lack of jurisdiction.

¶ 14 In March 2012, Zimmerman filed a motion to assign the case on remand and set a case management date. The court assigned the case and renumbered it under the current circuit court number. In April 2012, the trial court granted Zimmerman's oral request to file an amended motion to adjudicate attorney fee interests.

¶ 15 In April 2012, Zimmerman filed a combined motion for an extension of time to file his amended motion to adjudicate attorney fee interests and a motion to compel the escrow agent to

produce documents and give an accounting of disbursements. In his motion, Zimmerman asked for an order compelling the escrow agent to provide an accounting of all withdrawals and disbursements of the disputed fees and requested an extension of time to file his amended motion to adjudicate attorney fee interests until after the escrow agent produced the accounting and documents. Zimmerman asserted that the escrow agent left only \$59,620.17 on deposit in the court, instead of the court allocated \$62,000. Further, Zimmerman contended that if the trial court agreed that he was entitled to attorney fees as provided in his retainer agreements in the disputed fee cases, then he is entitled to \$392,708.33 and the other parties will have to disgorge some or all of the fees that they received. Holstein filed an objection to the motion and Zimmerman filed a reply.

¶ 16 In July 2012, the trial court entered a written order dismissing the case with prejudice. The court observed that the 07CH "matter continues to pend before the Chancery Division and, importantly, it is in that case the infamous \$62,000 resides consistent with the directive" contained in the December 2008 order. "Thus, the disposition of the \$62,000 fund awaits ruling by the Chancery Division and there is nothing for this Court to do in the matter remanded." The court continued:

"Clearly, this Court has the jurisdiction to resolve matters raised in the 07 CH case, however, that case is not assigned within the Law Division and the Court would not be presumptuous and transfer the instant case to the Chancery Division for it to resolve. This Order is entered with full regard to the intention of the Appellate Court to

finalize the issues between the parties and its goal of avoiding piecemeal review. *Zimmerman*, ¶ 16. There being nothing before this court to resolve it is, therefore, dismissed with prejudice.

In this Court's opinion, again, the deposit of the \$62,000 in the 07 CH case leaves nothing to be resolved in the instant case (Stern/02 CH case) unless the Court allows Zimmerman to file his amended motion to adjudicate liens and re-open litigation with multiple parties that were disposed of by Judge Locallo's orders. The Court declines to do so. Zimmerman can advance his claims in the pending 07 CH matter."

¶ 17 Zimmerman filed a motion to reconsider the dismissal order, arguing that his claim that he is entitled to disputed fees already disbursed to others remains pending in addition to his claim to the remaining disputed fees. He stated that he filed a motion in the 07CH case to transfer the remaining disputed fees to this case for the court to adjudicate his liens. Zimmerman asserted that the Law Division was better suited to resolve the adjudication of the disputed fees in this case than the Chancery Division in the 07CH case and that resolving the disputed fee issues in the 07CH case would be prejudicial to Zimmerman because there are multiple motions to dismiss pending in that case and that case "is not anywhere near as close to resolution of these matters." The motion to reconsider was denied in August 2012. Zimmerman in his brief on appeal added that the 07CH case remains pending and the circuit court denied the motions to dismiss, in part, but none of these orders are present in the record on the instant case.

¶ 18 This appeal followed.

¶ 19 On appeal, Zimmerman advances the same arguments as he did in the previous appeal with one additional argument. Zimmerman asserts that (1) the trial court's orders entering a settlement and distributing the disputed attorney fees was void because the court did not allow Zimmerman to participate in the distribution; (2) the trial court lacked jurisdiction to enter the settlement order when an interested party objects to the terms of the agreement and the objection appears on the face of the order; (3) the trial court failed to follow the procedural requirements under Illinois law governing disputes over attorney fees and the court violated Zimmerman's due process rights; (4) the trial court engaged in *ex parte* communications with other parties and showed bias against Zimmerman; and (5) on remand, the trial court erred by refusing to adjudicate Zimmerman's attorney fee interests.

¶ 20 None of the appellees filed a response brief in this court, but we may consider the appeal under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 21 This case presents a unique situation where a law firm closed and the pending cases continued to be handled by attorneys from the former law firm, and all parties claimed a right to a portion of the attorney fees received after a settlement in these cases. Here, Zimmerman is challenging his right to the remaining \$62,000, as well as the allocation of the attorney fees under the December 2008 settlement order, entered over Zimmerman's objection. According to Zimmerman, he is entitled to at least four times the remaining \$62,000, under the retainer agreements in the disputed cases. No evidentiary hearing was ever conducted to adjudicate

Zimmerman's claim to a portion of the attorney fees in the disputed cases.

¶ 22 We first point out that Zimmerman has failed to include complete retainer agreements for the *Huddleston* and *Ellis* cases in the record. As previously noted, the copy of the *Huddleston* agreement in the record is missing the portion outlining the division of attorney fees between Zimmerman and Holstein. No copy of the *Ellis* agreement is in the record, which Zimmerman admits in an affidavit.

¶ 23 Zimmerman, as the appellant, bears the burden of providing a sufficiently complete record to support his claim or claims of error, and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court was in conformity with law and had a sufficient factual basis. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Moreover, any doubt arising from the incompleteness of the record will be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392. Without these agreements, there is no basis in the record to support an award of attorney fees. Accordingly, we will not consider the division of attorney fees in either the *Huddleston* or *Ellis* cases. However, we do point out that the record on appeal suggests that the attorney fees in both cases have already been disbursed. We specifically note that the disbursement in the *Huddleston* case was entered in September 2007 with no objection by Zimmerman and the trial court ordered the account for that case to be closed.

¶ 24 Thus, the only disputed case remaining before us is the *Sun* case. According to the record, the *Sun* case involved multiple settlements, which generated a total of \$425,000 in attorney fees. Zimmerman already received \$37,500 from a \$125,000 disbursement of attorney fees, which equals 30% of that portion of attorney fees. He does not challenge this portion of the

attorney fees, but asserts that he is entitled to nearly \$250,000 of the remaining attorney fees award, that is four times the \$62,000 on reserve. The December 2008 settlement order distributed \$269,000 to SHZ, Holstein and Jewel Klein, another attorney who had worked on the case, with approximately \$62,000 remaining in escrow in the trial court for Zimmerman to prove up his fees. Zimmerman contends that the trial court erred in entering the settlement order and he is entitled to a portion of the attorney fees in accordance with his contingency clause in the retainer agreement.

¶ 25 " 'A contingent fee contract by definition is one that provides that a fee is to be paid to the attorney for his services only in case he wins, that is, a fee which is made to depend upon the success or failure to enforce a supposed right, and which fee is generally paid out of the recovery for the client.' " *In re Estate of Callahan*, 144 Ill. 2d 32, 40 (1991) (quoting *Pocius v. Halvorsen*, 30 Ill. 2d 73, 78 (1963)). However, the situation in this case is not simply a division based on the contingency agreement. While Zimmerman cites general principles that a contingency agreement is a contract that should be honored (see *Hapaniewski v. Rustin*, 179 Ill. App. 3d 951,854 (1989)), other attorneys, namely SHZ, Klein, and Holstein, performed work on the case and are entitled to recover a portion of attorney fees for their work. Zimmerman seems to agree to this position because he has cited cases that concern the determination of attorney fees when multiple attorneys represented a client under a contingency fee agreement. Although, *Callahan*, the case cited by Zimmerman for this point, involved the determination of attorney fees due to an attorney whose representation was terminated by the client. While SHZ closed its practice and was not discharged by the clients, the determination of attorney fees is akin to cases in which a client has

terminated his/her representation by an attorney.

¶ 26 When a client terminates an attorney working under a contingent-fee contract, the contract ceases to exist and the contingency term is no longer operative. *Callahan*, 144 Ill. 2d at 40. The discharged attorney's recovery "should not be linked to a contract contingency when his recovery is not based upon the contract, but upon *quantum meruit*." *Callahan*, 144 Ill. 2d at 40-41. "[*Q*]uantum meruit is based on the implied promise of a recipient of services to pay for those services which are of value to him." *Callahan*, 144 Ill. 2d at 40. "Under the theory of *quantum meruit*, the trial court is literally to award the attorney 'as much as he deserves.' " *Wegner v. Arnold*, 305 Ill. App. 3d 689, 693 (1999) (quoting *Kannewurf v. Johns*, 260 Ill. App. 3d 66, 74 (1994), quoting *Lee v. Ingalls Memorial Hospital*, 232 Ill. App. 3d 475, 478 (1992)). "A discharged attorney is entitled to be paid on a *quantum meruit* basis a reasonable fee for services rendered before discharge." *Wegner*, 305 Ill. App. 3d at 693 (citing *Rhoades v. Norfolk & Western Railway Co.*, 78 Ill. 2d 217, 230 (1979)). "One of the factors to be considered in measuring the value of the services received is the benefits that have resulted to the client from the attorney's representation." *Callahan*, 144 Ill. 2d at 41. "The burden of proof is on the attorney to establish the value of his services." *Callahan*, 144 Ill. 2d at 43. Contrary to Zimmerman's assertion, none of the cases cited provided for the client or current counsel to assert a defense, such as discharge for cause or abandonment, to a previous attorney's claim for attorney fees. Rather, the trial court in determining the *quantum meruit* value of an attorney's work

"should assess all of the relevant factors, including the time and labor required, the attorney's skill and standing, the nature of the

cause, the novelty and difficulty of the subject matter, the attorney's degree of responsibility in managing the case, the usual and customary charge for that type of work in the community, and the benefits resulting to the client." *Wegner*, 305 Ill. App. 3d at 693.

¶ 27 Here, no evidentiary hearing was conducted and, thus, the division of the attorney fees was not based on evidence establishing a reasonable value for legal services. However, Zimmerman's contention that he was entitled to almost four times the \$62,000 allocated for him is unreasonable and would amount to nearly 75% of the attorney fees. Based on the calculations used in the December 2008 order, the amount of attorney fees held in escrow was \$331,000. Even if we do not consider money due to SHZ and Klein for their work, the receiver was entitled to his \$31,000 payment for services rendered. This payment would leave \$300,000 remaining, and the most that Zimmerman could have been entitled to was \$150,000, under his retainer agreement to split fees 50/50 with Holstein in *Sun*.

¶ 28 Zimmerman argues that his portion of the attorney fees had priority over SHZ and Klein and should have been distributed directly from the terms of the retainer agreement. However, Zimmerman does not cite to any legal authority for this argument. " 'A reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented [citation], and it is not a repository into which an appellant may foist the burden of argument and research [citation]; it is neither the function nor the obligation of this court to act as an advocate or search the record for error [citation].' " *People v. Universal Public Transportation, Inc.*, 2012 IL App (1st) 073303-B, ¶ 50 (quoting *Obert v. Saville*, 253 Ill. App.

3d 677, 682 (1993)). Supreme Court Rule 341(h)(7) requires an appellant to include in its brief an "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008). Moreover, it is well settled that a contention that is supported by some argument but does not cite any authority does not satisfy the requirements of Supreme Court Rule 341(h)(7), and bare contentions that fail to cite any authority do not merit consideration on appeal. *Wasleff v. Dever*, 194 Ill. App. 3d 147, 155-56 (1990).

¶ 29 It is also unclear from the record the source of the attorney fee funds in escrow and could include payments from *Huddleston* and *Ellis*, which, as previously discussed, Zimmerman has not substantiated any entitlement to on this record. This above cited calculation does not take into account any amount Zimmerman already may have received in any of the disputed cases and the fact that SHZ, Klein, and Holstein were entitled to receive compensation for any work they did on the disputed cases. We further note that Zimmerman was not entitled to any attorney fees owed to SHZ since he previously sold his interest in the law firm to Stern. We recognize that most of the parties involved settled to resolve the ongoing litigation, but one party, Zimmerman, objected to the settlement. While we believe that the trial court should have conducted a hearing to determine the appropriate shares for all attorneys involved in the case, we decline to vacate the settlement order because we believe at this time it would be premature. The record before us does not support Zimmerman's claimed portion of the attorney fees, but the record does show that multiple attorneys worked on the case over several years prior to the underlying settlement giving rise to the attorney fees. All of the attorneys who worked on the case were entitled to a

portion of the fees and Zimmerman's assertion of a blanket 50% portion is not reasonable under these circumstances. Because multiple attorneys performed work on the case, we cannot say that the trial court's order that Zimmerman must establish what fees he is entitled to on a *quantum meruit* basis is unreasonable.

¶ 30 Nevertheless, since Zimmerman was not a party to, nor were his interests represented in the settlement between SHZ and Holstein, he is entitled to an evidentiary hearing where he can present evidence to establish what portion of the attorney fees from the *Sun* case is due to him. "While Illinois public policy favors the peaceful and voluntary resolution of disputes through settlement agreements [citation], it also favors protecting a nonsettling party's financial interest." *Readel v. Towne*, 302 Ill. App. 3d 714, 718 (1999). Additionally, "Illinois law holds that a settlement agreement does not bind and preclude appeal by those whose interests were not fully and adequately represented." *Jackson v. Callan Publishing, Inc.*, 356 Ill. App. 3d 326, 341 (2005). "Assuming that a valid settlement agreement operates as a merger of all included claims and a bar thereto [citation], such an agreement nevertheless has no *res judicata* effect on those who were not parties to it or their privies." *Jackson*, 356 Ill. App. 3d at 340.

¶ 31 Zimmerman is not bound by the settlement agreement and his rights to his share of the attorney fees remain pending. Since Zimmerman was not privy to the settlement between SHZ and Holstein, the trial court still has to consider Zimmerman's claim to the attorney fees. The trial court erred in dismissing this case with prejudice while Zimmerman's interest remained pending, regardless of where the \$62,000 is being held. Zimmerman is entitled to an evidentiary hearing where he can establish the reasonable amount of attorney fees he is due.

¶ 32 As we observed in the previous appeal,

"Furthermore, we cannot assume any particular outcome for the reserved funds. We cannot assume that Zimmerman will succeed in his arguments or that he will establish that he is entitled to the exact amount which is on deposit. Potentially, Zimmerman will fail altogether or prove entitlement to less than the account balance and all or some of the funds will be subjected to further motion practice from the attorneys and creditors who were awarded funds on December 16, 2008. Another possibility is that Zimmerman will establish that he is entitled to more than the amount on reserve (he contends 'he was entitled to almost four times' the account balance), in which case the court could order the previous recipients to disgorge the funds they received and tender them to Zimmerman." *Sun*, 2011 IL App (1st) 090693-U, ¶ 16.

We have no opinion as to the amount that Zimmerman is entitled to receive as attorney fees and leave that determination to the trial court.

¶ 33 Accordingly, we reinstate the case and remand for an evidentiary hearing at which time Zimmerman can establish his share of the attorney fees earned in the *Sun* case with consideration given to sums he has already received.

¶ 34 Because we are reversing and remanding for an evidentiary hearing, we need not reach Zimmerman's other arguments raised on appeal.

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¶ 35 Based on the foregoing reasons, we reverse the order by the circuit court dismissing the case with prejudice and remand for further proceedings consistent with this order.

¶ 36 Reversed and remanded.